

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

To: The Commission

REPLY COMMENTS

Nextel Communications, Inc., on behalf of its wholly-owned subsidiaries (collectively "Nextel"), hereby submits these reply comments in response to comments filed in the above-referenced proceeding.

I. Introduction

In its Second Report and Order and Further Notice of Proposed Rulemaking, the Commission took great strides toward clarifying its E-rate rules and ensuring that these rules are applied in a competitively neutral manner.¹ Nevertheless, as the comments filed in this proceeding demonstrate, additional clarification is needed regarding the eligibility of wireless services and the restriction on the funding of "duplicative services."

Many insightful comments have been submitted in response to the Commission's Further Notice of Proposed Rulemaking. A number of commenters express similar views regarding the Commission's proposed debarment policies and computerized eligible services list for telecommunications services. Nextel applauds the Commission's efforts to deter waste, fraud, and abuse in the program, but agrees with commenters that have urged the Commission to debar only those entities that commit violations related to their

¹ *Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202 (2003) ("*Second Report and Order and FNPRM*").

participation in the E-rate program. In addition, Nextel agrees with a number of other commenters who have argued that the government-wide debarment rules should not be applied to the E-rate program. While Nextel supports the Commission's efforts to provide greater clarity and direction to E-rate participants in the form of an eligible services list for telecommunications services, Nextel concurs with those commenters that have expressed concern regarding the Universal Service Administrative Company's ("USAC") ability to compile and maintain a current list.

II. Eligibility of Wireless Services

Several commenters - the Arkansas E-Rate Work Group ("AEWG") and the Association for Telecommunications and Technology Professionals Serving State Government ("NASTD") - have expressed concern regarding the Commission's statement that "Accordingly, basic telephone service, which includes mobile and fixed wireless service, is eligible for discounts..."² These Commenters fear that by this statement, the Commission is limiting funding for wireless services by making "basic service" the only eligible wireless offering. In Nextel's Petition for Reconsideration or Clarification ("Petition" or "Nextel's Petition") in this proceeding, Nextel requested the Commission to clarify that wireless services are eligible for funding when used not just in place of, but also in addition to, wireline service.³ As discussed in Nextel's Petition, E-rate participants should have the flexibility to subscribe to wireline service for some personnel and wireless service for others.⁴ In Nextel's Petition, Nextel also explained that wireless data offerings are a valuable service option for many schools and libraries and requested

² *Second Report and Order and FNPRM*, 18 FCC Rcd 9202, at 9211; AEWG Comments, p. 3-4; NASTD Comments, p. 6.

³ See Nextel Petition for Reconsideration or Clarification ("Nextel Petition"), p. 6 (pagination of version available on the Commission's ECFS is different, p.7 on ECFS version).

that the Commission clarify that these services are eligible for funding.⁵ The Comments of AEWG and NASTD clearly demonstrate that additional clarification is needed with respect to the eligibility of wireless service for offerings beyond basic service.

III. Duplicative Services Restriction

Multiple commenters have urged the Commission to provide additional guidance regarding the definition of "duplicative service."⁶ Nextel agrees with these commenters on this issue. In its Petition, Nextel specifically requested the Commission recognize that wireline and wireless services are complementary rather than duplicative services.⁷ Other commenters have raised similar concerns with interpreting the Commission's pronouncement concerning duplicative service.

According to Funds for Learning, "In the short time since the Commission's final rule was announced in April 2003, this has already created confusion over the extent to which the Commission intended this rule to be applied."⁸ Funds for Learning requests that the Commission provide clarification on how the prohibition on "duplicative services" will be applied.⁹ AEWG and NASTD both seek clarification regarding whether duplicative service determinations will be made prospectively or upon delivery.¹⁰ Nextel supports these comments to the extent they request additional clarification of the Commission's restriction on the funding of duplicative services. As Nextel noted in its Petition, wireless service offers features and functionalities that wireline service cannot

⁴ *Id.*

⁵ Nextel Petition, p. 6-7 (ECFS version p. 7-8, *see* FN 3 above).

⁶ AEWG Comments, p. 2-3; NASTD Comments, p. 4; Funds for Learning Comments, p. 8; State E-rate Coordinators Alliance ("SECA"), p. 37-38.

⁷ Nextel Petition, p. 5 (ECFS version, p. 6, *see* FN 3 above).

⁸ Funds for Learning Comments, p. 8.

⁹ *Id.*

¹⁰ AEWG Comments, p. 3; NASTD Comments, p. 4.

provide.¹¹ For example, the mobility of wireless service makes it uniquely suited for safety purposes.¹² Wireless and wireline service are complementary, not duplicative, services.

IV. Debarment Provisions

Nextel applauds the steps the Commission has taken to curb waste, fraud, and abuse in the E-rate program. However, Nextel agrees with those commenters that have raised concerns regarding the scope of the Commission's proposed debarment provisions. Several commenters have stated debarment should not apply if the violation concerned is unrelated to participation in the E-rate program. For example, the Consortium for School Networks and International Society for Technology in Education ("CoSN and ISTE") state that, "Short of a specific connection to the program, CoSN and ISTE are leery of debarring an individual for acts unrelated to the E-Rate program."¹³ Similarly, StateNets argues that service providers or applicants convicted of violations not related to the E-rate program should not be subject to debarment.¹⁴ Nextel agrees with these commenters that the Commission's debarment rules should relate only to those violations associated with E-rate participation. To extend debarment to entities that commit violations unrelated to E-rate would go beyond the Commission's goal of deterring waste, fraud and abuse *in the program*¹⁵ and would amount to punishment - when the Commission has expressly stated punishment was not its objective.¹⁶ Debarment of individuals for violations associated

¹¹ Nextel Petition, p. 6 (ECFS version, p. 7, *see* FN 3 above).

¹² *Id.*, p. 4 (ECFS version, p. 4, *see* FN 3 above).

¹³ CoSN and ISTE Comments, p. 11.

¹⁴ StateNets Comments, p. 4.

¹⁵ *Second Report and Order and FNPRM*, 18 FCC Rcd 9202, at 9227 (emphasis added).

¹⁶ *Second Report and Order and FNPRM*, 18 FCC Rcd 9202, at 9225.

with the E-rate program is a strong penalty, which should be more than adequate to achieve the Commission's goal of deterring waste, fraud, and abuse.¹⁷

Nextel supports recommendations made by CoSN and ISTE and Sprint Corporation ("Sprint") that debarment penalties should be tied to the severity of the violations.¹⁸ It would be inappropriate to apply the same penalty to all entities, regardless of the type of violation committed. A tiered approach should distinguish between those entities that have committed errors and those who have engaged in willful conduct.

With respect to the Commission's proposal to adopt government-wide debarment rules, Nextel agrees with those commenters who state that it is inappropriate to apply the government-wide debarment rules to the E-rate program. Nextel supports Verizon's argument that it is premature to adopt the government-wide debarment rules because those rules have not yet been finalized.¹⁹ In addition, Nextel agrees with CoSN and ISTE that it would be inappropriate to adopt government-wide debarment rules because the E-rate program differs dramatically from traditional government procurement programs.²⁰ To the extent the Commission chooses to impose penalties, such as debarment, to curb waste, fraud and abuse, it should continue down the path it has already taken by establishing provisions that relate specifically to the E-rate program rather than adopting the unsuitably broad and incomplete government-wide debarment rules.

¹⁷ Notably, in the broadcasting service, the Commission is reluctant to take into account non-FCC violations when evaluating character unless such violations involve fraudulent misrepresentations to another government unit or serious criminal violations, particularly those involving false statements or dishonesty, which have been adjudicated. *See Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Report, Order and Policy Statement*, 102 F.C.C.2d 1179 (1986).

¹⁸ CoSN and ISTE Comments, p. 8; Sprint Comments, p. 3.

¹⁹ Verizon Comments, p. 9-10.

²⁰ CoSN and ISTE Comments, p. 6.

Nextel also supports Verizon's statements regarding the Commission's proposed imputation of conduct provisions. Nextel agrees with Verizon that the rules, as proposed, are overly broad.²¹ Specifically, the proposal that conduct should be imputed from one person to another based on the latter receiving the "benefits derived from the conduct" could have far-reaching impacts on large corporations, even though they are not complicit in and did not approve of the wrongdoing. Under this proposal, a low-level employee could commit a violation of the E-rate rules without the knowledge of the corporation and, because the corporation benefits by selling its services, the entire corporation could be debarred. Nextel expressed similar concerns regarding the scope of imputation of conduct in its Petition.²²

V. Eligible Services List

In principle, Nextel supports the Commission's efforts to provide guidance to E-rate applicants in the form of an eligible services list for telecommunications services. However, in a high-tech innovative marketplace such as the telecommunications industry -- with new and cutting-edge services constantly being introduced by service providers -- the creation of a computerized list of eligible telecommunications services by brand name would likely be unworkable. Accordingly, Nextel agrees with BellSouth Corporation ("BellSouth"), Sprint, and CoSN to the extent they have argued that it would be nearly impossible to develop an exhaustive list of telecommunications services and would also be difficult to keep such a list current.²³

VI. Eligible Vendor List

Nextel disagrees with Fibertech Networks, LLC's ("Fibertech") proposal that the

²¹ Verizon Comments, p. 11.

²² Nextel Petition, p. 8-9 (ECFS version, p. 9-10, *see* FN 3 above).

Commission establish an eligible vendor list that requires a registration fee to be paid by vendors.²⁴ Such a list would ultimately limit the options of the schools and libraries participating in the program. All vendors should be eligible, to the extent they provide eligible services, and should not be required to go through an additional screening process beyond those that are already in place. Service providers already contribute to federal and state universal service funds. There is no basis for assessing additional charges in order to establish eligibility.

VII. Conclusion

For the foregoing reasons, Nextel respectfully requests that the Commission provide additional clarification of its E-rate rules regarding the eligibility of wireless services and restrictions on the funding of "duplicative services," as well as its proposed debarment policies.

Respectfully Submitted,

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²³ BellSouth Comments, p. 3; Sprint Comments, p. 7; CoSN Comments, p. 4.

²⁴ Fibertech Comments, p. 3-5.

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